

Assembly Bill No. 1830

CHAPTER 685

An act to add Section 22963 to the Business and Professions Code, relating to tobacco products.

[Approved by Governor September 18, 2002. Filed
with Secretary of State September 18, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1830, Frommer. Tobacco products: sales to minors.

Existing law creates the Stop Tobacco Access to Kids Enforcement (STAKE) Act. The STAKE Act is designed to reduce the availability of tobacco products to minors through specified sales restrictions and enforcement activities. Existing law authorizes the State Department of Health Services to assess civil penalties against any person, firm, or corporation that furnishes a tobacco product to a minor.

This bill would prohibit any person from distributing or selling tobacco products via the United States Postal Service, or any other public or private postal or package delivery service, to any purchaser who is a minor. This bill would require a specified distributor or seller, among other things, to verify that a purchaser of tobacco products is 18 years of age or older, and to telephone the purchaser after 5 p.m. to confirm the order prior to shipping the tobacco products.

This bill would authorize a city attorney, district attorney, or the Attorney General to assess specified civil penalties against a person, firm, corporation, or other entity that violates any of these provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 22963 is added to the Business and Professions Code, to read:

22963. (a) The distribution or sale of tobacco products directly or indirectly to any person under the age of 18 years through the United States Postal Service or through any other public or private postal or package delivery service at locations, including, but not limited to, public mailboxes and mailbox stores, is prohibited.

(b) Any person selling or distributing tobacco products directly to a consumer in the state through the United States Postal Service or by any other public or private postal or package delivery service, including orders placed by mail, telephone, facsimile transmission, or the Internet, shall comply with the following provisions:

(1) (A) Before enrolling a person as a customer or distributing or selling the tobacco product through any of these means, the distributor or seller shall verify that the purchaser is 18 years of age or older. The distributor or seller shall attempt to match the name, address, and date of birth provided by the customer to information contained in records in a database of individuals whose age has been verified to be 18 years or older by reference to an appropriate database of government records kept by the distributor, a direct marketing firm, or any other entity. The distributor or seller shall also verify that the billing address on the check or credit card offered for payment by the purchaser matches the address listed in the database.

(B) If the distributor or seller is unable to verify that the purchaser is 18 years of age or older pursuant to subparagraph (A), he or she shall require the customer to submit an age-verification kit consisting of an attestation signed by the customer that he or she is 18 years of age or older and a copy of a valid form of government identification. For the purposes of this section, a valid form of government identification includes a driver's license, state identification card, passport, an official naturalization or immigration document, such as an alien registration receipt card (commonly known as a "green card") or an immigrant visa, or military identification. The distributor or seller shall also verify that the billing address on the check or credit card provided by the consumer matches the address listed in the form of government identification.

(2) The distributor or seller shall impose a two-carton minimum on each order of cigarettes, and shall require payment for the purchase of any tobacco product to be made by personal check of the purchaser or the purchaser's credit card. No money order or cash payment shall be received or permitted. The distributor or seller shall submit to each credit card acquiring company with which it has credit card sales identification information in an appropriate form and format so that the words "tobacco product" may be printed in the purchaser's credit card statement when a purchase of a tobacco product is made by credit card payment.

(3) The distributor or seller shall make a telephone call after 5 p.m. to the purchaser confirming the order prior to shipping the tobacco products. The telephone call may be a person-to-person call or a recorded message. The distributor or seller is not required to speak directly with a person and may leave a message on an answering machine or by voice mail.

(4) The distributor or seller shall deliver the tobacco product to the purchaser's verified billing address on the check or credit card used for payment. No delivery described under this section shall be permitted to any post office box.



(c) Notwithstanding subdivisions (a) and (b), if a distributor or seller complies with all of the requirements of this section and a minor obtains a tobacco product by any of the means described in subdivision (b), the seller or distributor is not in violation of this section.

(d) For the purposes of the enforcement of this section pursuant to Section 22958, the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others, and the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's contents, are not unlawful and are not subject to civil penalties.

(e) (1) For the purposes of this section, a “distributor” is any person or entity, within or outside the state, who agrees to distribute tobacco products to a customer within the state. The United States Postal Service or any other public or private postal or package delivery service are not distributors within the meaning of this section.

(2) For the purpose of this section, a “seller” is any person or entity, within or outside the state, who agrees to sell tobacco products to a customer within the state. The United States Postal Service or any other public or private postal or package delivery service are not sellers within the meaning of this section.

(3) For the purpose of this section, a “carton” is a package or container that contains 200 cigarettes.

(f) A district attorney, city attorney, or the Attorney General may assess civil penalties against any person, firm, corporation, or other entity that violates this section, according to the following schedule:

(1) A civil penalty of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000) for the first violation.

(2) A civil penalty of not less than two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500) for the second violation.

(3) A civil penalty of not less than four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000) for the third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500) for the fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth or subsequent violation within a five-year period.

